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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

Arizona Corporation Commission

DOCKETED

MAR - 9 2011

DOCKETED BY

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IN THE MATTER OF THE APPLICATION
OF ABOVE NET COMMUNICATIONS, INC.
FOR AUTHORITY TO ENCUMBER ITS
ASSETS IN CONNECTION WITH
FINANCING

DOCKET NO. T-03774A-10-0488

DECISION NO. 72219

ORDER

Open Meeting
March 1 and 2, 2011
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On December 9, 2010, AboveNet Communications, Inc. ("AboveNet") filed an application to encumber its assets in connection with proposed financings of up to \$400 million for itself or its Parent, AboveNet, Inc. ("ANI"). Approval was requested pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285.

The Transaction

2. AboveNet proposes that ANI and/or AboveNet obtain up to \$400 million through one or more financing arrangements or credit facilities with banks, other financial institutions, and/or other types of investors (the "Financings"). The exact amounts and terms of each Financing will not be finalized until the specific arrangement(s) have been completed or shortly before funding of the various transactions, and will reflect the market conditions then existing. Some of ...

1 the terms, such as interest rate, may fluctuate during the term of the Financing due to changes in
2 market conditions and the financial condition and/or the performance of the Borrowers.

3 Staff's Analysis

4 3. AboveNet states in its application that prepaid funds and deposits for Arizona
5 customers will not be encumbered. The Applicant published a notice of financing application in
6 the Arizona Business Gazette, a newspaper with distribution in Maricopa County, on January 6,
7 2011. To ensure coverage of customers outside of Maricopa County, AboveNet published a notice
8 of financing application in the Arizona Republic, a newspaper with statewide distribution, on
9 January 26, 2011.

10 4. A.R.S. § 40-285 requires public service corporations to obtain Commission
11 authorization to encumber certain utility assets. The statute serves to protect captive customers
12 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
13 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
14 service. Staff concludes that a pledge of the Applicant's assets would not impair the availability of
15 service to customers since the Applicant provides competitive services that are available from
16 alternative service providers.

17 5. Based on its analysis of the proposed transaction, Staff concludes that the
18 transaction would not impair the financial status of the Company, would not impair its ability to
19 attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and
20 adequate service.

21 6. Staff, therefore, recommends that the Commission approve the Applicant's request
22 to encumber AboveNet's assets as described in this application.

23 7. Customers may still have exposure to losses to the extent they have prepaid for
24 service or made deposits. Therefore, Staff recommends approval of the application subject to the
25 condition that all customer deposits and prepayments be excluded from encumbrance and
26 equivalent amounts be retained by the Applicant.

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8. Staff further recommends that one copy of the executed security documents be filed with Docket Control, as a compliance item in this matter, within 90 days of the execution of any financing transaction authorized herein.

CONCLUSIONS OF LAW

1. AboveNet Communications, Inc. is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over AboveNet Communications, Inc. and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated February 15, 2011, concludes that it is in the public interest to grant approval for the Applicant to encumber assets as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the application of AboveNet Communications, Inc. seeking approval to encumber AboveNet Communications, Inc.'s assets, be and hereby is approved.

IT IS FURTHER ORDERED that AboveNet Communications, Inc. is authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the application of AboveNet Communications, Inc. is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by AboveNet Communications, Inc.

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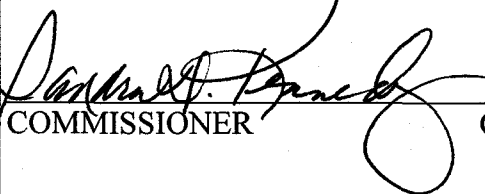
1 IT IS FURTHER ORDERED that one copy of executed security documents shall be filed
2 with Docket Control, as a compliance item in this matter, within 90 days of the decision in this
3 matter.

4 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

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6 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

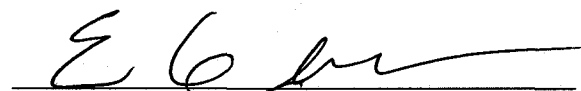

COMMISSIONER

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COMMISSIONER


COMMISSIONER


COMMISSIONER

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13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation Commission,
15 have hereunto, set my hand and caused the official seal of
16 this Commission to be affixed at the Capitol, in the City of
17 Phoenix, this 9th day of March, 2011.

18 
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21 DISSENT: _____

22 DISSENT: _____

23 SMO:AFF:sms/BH
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1 SERVICE LIST FOR: ABOVENET COMMUNICATIONS, INC.
2 DOCKET NO. T-03774A-10-0488

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